IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.5456 OF 2005

Shri Komal Dhobi .. Petitioner

v/s.

Mr.Sebastine D'Souza
(since deceased)

1(a) Allan Sebastine D'Souze
& ors. .. Respondents

Mr.P.S.Dani i/by Mr.S.W.Kulkarni for the petitioner.

Mr.Vinit Naik with Mr.V.P.Sawant i/by M/s.Shah & Sanghvi for the respondent Nos.1(a) and 1(b).

Mr.V.E.Pereira for the respondent No.2.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 5th October, 2005

P.C.

This petition challenges the concurrent findings of fact of both the courts below. It is contended on behalf of the petitioner that the findings of both the courts below that the petitioner had received the notice of demand was incorrect. It is submitted that the notice of demand was sent to Room No.6 and not to shop No.3 which was occupied by the petitioner. The envelop containing the notice was returned with the endorsement 'unclaimed'. On this ground, both the courts below have found that the notice of demand

had been served on the petitioner.

2. There is an admission made by the petitioner where he states that the address at Exhibit "B" which was the unclaimed envelop containing the notice of demand was correct. This, in my view, goes to the root of the matter and both the courts below have rightly held that the notice of demand had been served. I find no infirmity in the finding of both the courts below. Petition rejected.

3. On the application of Mr.Dani, learned advocate for the petitioner, time to vacate the suit premises is extended upto 31st May, 2006 on the usual undertaking being given by the petitioner within two weeks from today.

(SMT.NISHITA MHATRE, J.)